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## LABOUR & E. S. I. DEPARTMENT

### NOTIFICATION

The 11th November 2014

No. 8983—IR -(ID)-155/2014-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th September 2014 in Industrial Dispute Case No. 39/2012 of the Presiding Officer, Labour Court, Bhubaneswar wherein the industrial dispute between the Management of (1) The Managing Director, Odisha Forest Development Corporation Ltd., A/84, Kharavelnagar, Bhubaneswar-1, (2) Divisional Manager, Odisha Forest Development Corporation Ltd., 217/218, Satyanagar, Bhubaneswar-1 and its Workman Shri Upendra Kumar Dash was filed by the above mentioned Workman under Section 2-A(2) of I.D. Act, 1947 for adjudication is hereby published as in the Schedule below:

### SCHEDULE

#### IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 39 OF 2012 [u/S 2-A(2)]

Dated the 29th September 2014

#### *Present :*

S. K. Sahoo, O.S.J.S. (Junior Branch),  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

#### *Between :*

- |  |                              |
|--|------------------------------|
| The Management of—   | . . . First Party—Management |
| 1. The Managing Director,<br>Odisha Forest Development<br>Corporation Ltd.,<br>A/84, Kharavelnagr,<br>Bhubaneswar-1. |                              |
| 2. Divisional Manager,<br>Odisha Forest Development<br>Corporation Ltd.,<br>217/218, Satyanagar,<br>Bhubaneswar-1.   |                              |

And

Its Workman,  
Shri Upendra Kumar Dash,  
S/o Shri Krushna Chandra Dash,  
C/o Satrugnan Senapati,  
At Jariput, P.O. Gudum,  
Dist. Khurda.

. . . Second Party—Workman

*Appearances :*

Shri A. K. Swain, Auth. Rept.	. .	For the First Party—Management
Shri U. K. Dash	. .	For the Second Party—Workman himself

AWARD

This case has been initiated on receipt of an application from one Upendra Kumar Dash under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act').

2. The case of the second party workman, in brief, is that he was working as a Watcher under the first party management with effect from the October 1988 and while working as such he got a retrenchment notice dated 3-7-2001 against which he represented vide his letter dated 14-7-2001 but the first party management without considering the same terminated his service with effect from 31-7-2001. It is the specific stand of the second party that in spite of his rendering continuous service under the management for more than 240 days prior to his date of termination, the first party, which is an 'industrial establishment', in gross violation of the provisions of Section 25-N of the Act has effected such termination. Further assertion of second party is that the compliance of the provisions of Section 25-F of the Act, said to have been made by the first party, while terminating his service having been done much after the retrenchment, the same is not proper. His termination being in contravention of the provisions of Section 25-N of the Act, he has claimed for his reinstatement in service with full back wages and all consequential benefits.

3. The first party management entered contest in the case and filed its written statement stating therein, *inter alia*, that the second party was engaged under it on daily wage basis without following the due recruitment procedure and he was getting his wages as per the rates prescribed by the Labour & Employment Department from time to time. It is stated that after merger of O.F.C., O.P.D.C. and S.F.D.C., the O.F.D.C. was formed with effect from the 1st October 1990 and after merger since it was observed that staff strength were exorbitantly large in comparison to the available workload, an Expert Body namely, M/s Tata Consultancy Services was engaged to suggest the manpower planning against the available workload. The said Firm submitted its report in the year 1993 showing 3,281 numbers of regular employees to be surplus. Thereafter the matter was reviewed by the Board of Directors in their meeting held on 5-5-1995 wherein it was resolved to reduce the staff strength by way of retrenchment following the due procedure of the Act and consequently a notice was issued to the second party on 3-7-2001 asking him to show cause in the matter of his retrenchment. On receipt of his reply to the show cause and after affording him a chance of personal hearing he has been retrenched from service vide order dated 27-7-2001 on payment of Rs. 7,013 towards notice pay and compensation. According to the management, its

organisation being not an 'industrial establishment', the provisions of Section 25-F of the Act is applicable and the same having been complied by the first party, the second party is not entitled to any relief in the present proceeding.

4. Basing on the pleadings of the parties, the following issues have been framed :—

#### ISSUES

(i) Whether the action of the management of Odisha Forest Development Corporation Ltd., Bhubaneswar in terminating the services of Upendra Kumar Dash with effect from the 31st July 2001 is legal and/or justified ?

(ii) If not, what relief Shri Dash is entitled to?

5. To substantiate their respective stand, while the second party has examined himself as W.W. No.1 and did not choose to adduce any documentary evidence, the first party has examined Shri Pradipta Kumar Nayak, one L.D. Assistant on its behalf and filed documents which have been marked as Exts.A to F/1.

#### FINDINGS

6. *Issue Nos. (i) & (ii)*—The employment of the second party workman under the management is admitted and so also his retrenchment with effect from 31st July 2001. The main controversy which centres round the dispute is as to whether the provisions of Section 25-F or Section 25-N of the Act is applicable to the present case. While the management contends that Section 25-F is applicable to its establishment, the stand of the workman is that the establishment of the first party being an 'industrial establishment' the provisions of Section 25-N is applicable and contravention thereof renders the action of the management illegal as well as unjustified.

7. On scrutiny of the pleadings of the parties as well as the evidence it is found that admittedly there has been compliance of the provisions of Section 25-F of the Act while effecting retrenchment of the second party workman. However, in view of the specific assertion of the workman that provisions of Section 25-N of the Act is applicable to the establishment of the first party, the relevant provision is to be seen together with the evidence available on record to arrive at a proper conclusion in the matter. In this connection, it is appropriate to refer to Chapter VB of the Act, Section 25-K whereof stipulates as follows :—

"25K. Application of Chapter VB—(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

(2) xx    xx    xx    xx    xx    xx    xx"

8. It reveals from the written statement of the management as well as from the documentary evidence placed on record by the management i.e. Ext.E that while retrenching the workman it had in its employment more than hundred workmen. On the face of such admission it can safely be said that the first party management clearly comes within the purview of Chapter VB of the Act and consequently the provisions embodied in Section 25-K and 25-L are also applicable to bring the establishment of the first party within the meaning of an 'industrial establishment'. In view of the conclusion arrived at by this Court, the management was required to comply with the provisions of Section 25-N of the Act while effecting termination of service of the second party workman. But it being the admitted fact that there was no such compliance by the first party management, the action taken against the workman is held to be illegal. However, its action seems to be justified one on account of the fact that such a step was taken not only in respect of the second party alone but also in respect of other employees to reduce the staff strength comparing to the available workload. It is further found from Ext.F that the workman has received his terminal benefits as per the provisions of Section 25-F of the Act by making an endorsement as per Ext.F/1. Taking the aforesaid fact into consideration; the length of employment of the second party workman; his age and the mode of his induction into the employment of the first party, reinstatement and back wages, in my considered view, would not be appropriate to be awarded in favour of the second party and instead some compensation would be the just and proper relief in the present proceeding. Accordingly, the first party management is directed to pay a lump sum compensation of Rs. 1,00,000 (Rupees one lacs only) to the second party workman within a period of two months of the date of publication of the Award in the Official Gazette, or else the amount of compensation would carry a simple interest of 8% per annum till it is paid to the second party workman.

Dictated and corrected by me.

S. K. SAHOO  
29-9-2014  
Presiding Officer  
Labour Court  
Bhubaneswar

S. K. SAHOO  
29-9-2014  
Presiding Officer  
Labour Court  
Bhubaneswar

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By order of the Governor  
M. NAYAK  
Under-Secretary to Government